

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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FLATBUSH BEST DELI, INC.,

**COMPLAINT**

Plaintiff,

Case # C0145430

-against-

UNITED STATES OF AMERICA,  
UNITED STATES DEPARTMENT OF AGRICULTURE,  
ADMINISTRATIVE REVIEW DIVISION,

Defendants.

**CV 12- 3035**  
**COGAN, J.**

-----x  
  
Plaintiff, FLATBUSH BEST DELI, INC., by its attorney, EDWARD M.  
KRATT, P.C., complaining of the UNITED STATES, UNITED STATES  
DEPARTMENT OF AGRICULTURE, ADMINISTRATIVE REVIEW DIVISION, on  
information and belief, alleges as follows:

#### **INTRODUCTION**

1. This action is brought pursuant to 7 U.S.C. Section 2023 to  
seek de novo review of an administrative determination by  
defendants to disqualify plaintiff from participation in the  
Supplemental Nutrition Assistance Program (SNAP) for a period of  
six months.

### **JURISDICTION AND VENUE**

2. Jurisdiction is specifically conferred on this Court by 28 U.S.C. Section 1331, this being an action arising under the Constitution and laws of the United States. This court also has jurisdiction of this action pursuant to 7 U.S.C. Section 2023 and 5 U.S.C. Section 703.

3. Venue is proper in this Court because the acts complained of by the defendants occurred in Brooklyn, New York, which is in the Eastern District of New York, and which is also the location where the plaintiff is engaged in business.

### **PARTIES**

4. During all times relevant and material to this complaint, plaintiff was, and still is, a retail grocery store, operating under the name of FLATBUSH BEST DELI, INC., and engaged in business at 1218 Flatbush Avenue, Brooklyn, New York 12226, within the jurisdiction of this Court.

5. During all times relevant and material to this complaint, defendant, UNITED STATE DEPARTMENT OF AGRICULTURE, was, and still is, a Department of the UNITED STATES OF AMERICA.

6. The ADMINISTRATIVE REVIEW DIVISION is sued in this action as it bears the ultimate responsibility for the decisions of the agency.

7. The UNITED STATES is a defendant pursuant to the provisions of the Food Stamp Act, specifically, 7 U.S.C. Section 2023(a)(13).

#### **FULFILLMENT OF ADMINISTRATIVE PREREQUISITES**

8. All conditions precedent for the filing of this action have been complied with: plaintiff has exhausted its administrative remedies and will be disqualified from participating in the SNAP program by June 23, 2012, unless this action is filed.

9. It has been less than thirty (30) days since the plaintiff's final appeal, dated May 22, 2012 and received by counsel on May 23, 2012, was denied by the defendants. (A copy of the Final Agency Decision is annexed as **Exhibit 'A'**)

#### **FACTS COMMON TO ALL CAUSES OF ACTION**

10. By the letter of Gilda Torres, Officer-In-Charge of the New York Field Office of the U.S. Department of Agriculture, dated October 25, 2011, plaintiff was charged with a violation of the SNAP program regulations, in that it allegedly made ineligible sales on three occasions. (A copy of said letter, and attached charges, is annexed as Exhibit 'B' to the plaintiff's December 20, 2011 application for review of this decision, **Exhibit 'B' of this Complaint.**)

11. A disqualification period of six months was imposed as a sanction therefore.

12. By letter of Mukhtar Saleh, the owner of Flatbush Best Deli, Inc., dated November 14, 2011, (Exhibit 'D' of application for review), a response to and an innocent explanation of those charges were interposed.

13. In response thereto, via letter of December 15, 2011 from Ms. Gilda Torres (Exhibit 'C' of review application), a determination that the proffered violations had occurred was made and the imposition of a six month disqualification, rather than a civil penalty, was effected.

14. Thereafter, a timely application for a review of that determination was made by plaintiff's counsel, via letter brief of December 20, 2011, addressed to the Administrative Review branch of the U.S. Department of Agriculture. (A copy of that application brief, together with submitted Exhibits, is annexed as **Exhibit 'B' herein.**)

#### **ALLEGED VIOLATIONS**

15. In said brief, Counsel addressed the three alleged violations of August 23, 2011, August 31, 2011 and September 22, 2011, indicating that each sale of an ineligible food item involved a small amount of value. (Page 3 of brief, "A. Alleged Violations") The descriptions of the store employees, who allegedly sold ineligible items, did not match the physical characteristics of the store's employees. Moreover, on August 29, 2011, a store

employee actually refused to sell an ineligible item to the Confidential Informant and Agent, evincing a lack of intent to violate the regulations on other dates.

16. Moreover, although Mr. Saleh, the owner of the store, had not been present to supervise his employees on the subject dates, he had taken great effort and pains to educate his employees on the SNAP regulations, as evidenced by the refusal of a store employee to sell ineligible items on August 29, 2011.

17. Counsel contended that the December 15, 2011 determination had arbitrarily and capriciously failed to consider 1) the nature and scope of the alleged violations, 2) the lack of any prior action taken to warn the business of the possibility that violations were occurring and 3) other evidence of the firm's lack of intent to violate SNAP regulations.

#### **HARDSHIP TO HAITIAN COMMUNITY**

18. In his Brief, counsel specifically addressed the hardship that would result to the Haitian Community, should the firm be disqualified from SNAP participation. (Page 5 of brief, "B. Hardship to the Haitian Community") It advanced said circumstances in its application for a civil fine in lieu of disqualification.

19. As discussed therein, plaintiff's store is unique in the area, in that it primarily and exclusively serves and caters to the Haitian community. It employs native Haitian workers and/or

workers who speak French and Creole languages.

20. As part of Counsel's additional submission to the Review Branch, dated January 13, 2012, (annexed as **Exhibit 'C' hereto**) a petition from the patron/clients of the business was submitted, attesting to the unique food and services provided by plaintiff as well as the need therefore in the community.

21. These factors of themselves suffice to satisfy the hardship requirements for the imposition of a civil monetary penalty in lieu of disqualification.

22. Moreover, plaintiff will suffer irreparable damage and untold hardship if this disqualification is upheld, in that thirty-five (35) to forty (40) percent of plaintiff's revenue comes from Food Stamp sales transactions. Plaintiff's main source of business is the sale of food items to low income Haitian clients, who use food stamps for their purchases.

23. If defendants are allowed to proceed with the disqualification, plaintiff might have to close down the store and discontinue its business, as it would be unable to pay its staff, as well as bills and overhead.

24. Further, plaintiff employs six workers (including the owner, Mr. Saleh), who depend entirely upon the revenue from this store for their livelihood. Closing of the store would render them unemployed.

**ARBITRARY AND CAPRICIOUS PENALTY**

25. Given plaintiff's heretofore unblemished record in the SNAP program and having received no prior warning of irregularity of its adherence to its regulations, it is contended that the imposition of a six month period of disqualification is both arbitrary and capricious. It should be vacated by this Court and a civil penalty imposed in lieu thereof.

**FIRST CAUSE OF ACTION**

26. Plaintiff repeats and alleges paragraphs 1 through 25 as if full stated here.

27. Defendants' decision to disqualify plaintiff from the SNAP program for six months was arbitrary and capricious, and violated defendants' own regulations.

**SECOND CAUSE OF ACTION**

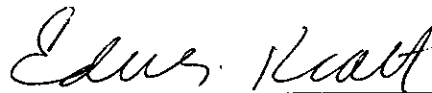
28. Plaintiff repeats and re-alleges paragraphs 1 through 27 as if fully stated here.

29. Defendants' decision to find plaintiff to be ineligible for a civil money penalty in lieu of disqualification violated applicable regulations. 7 C.F.R. Section 278.6(j).

**WHEREFORE**, plaintiff requests a judgment and order of this Court:

1. Ordering defendants to stay execution of defendants' decision to disqualify plaintiff from the SNAP program for six months and enjoining the implementation of the threatened disqualification;
2. Ordering defendants to immediately reinstate plaintiff in the SNAP program;
3. Ordering defendants to impose a civil penalty in lieu of disqualification if the court deems any such penalty is just and proper;
4. Awarding plaintiff costs of the suit;
5. Granting plaintiff such other and further relief as the Court may deem just and proper.

Dated: New York, N.Y.  
June 18, 2012



EDWARD M. KRATT, P.C.  
By: EDWARD M. KRATT, ESQ.  
Attorney for  
FLATBUSH BEST DELI, INC.  
350 Broadway, Suite 1202  
New York, N.Y. 10013  
212-941-1277







May 22, 2012

Edward M. Kratt, Attorney  
Law Office of Edward M. Kratt  
350 Broadway, Suite 1202  
New York, New York 10013

**Re: Flatbush Best Deli Inc. v. NERO Retailer Compliance Center South**

Dear Mr. Kratt:

Enclosed is the Final Agency Decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service in response to your request for administrative review on December 20, 2011. Also included therein is a statement regarding your client's rights to a judicial review.

It is the decision of the USDA that there is sufficient evidence to support a finding that a six month disqualification from participating as an authorized retailer in the Supplemental Nutrition Assistance Program was properly imposed against Flatbush Best Deli Inc. by the Northeast Regional Office's (NERO) Retailer Compliance Center South.

Sincerely,

A handwritten signature in cursive script that reads "Lorie L. Conneen". The signature is written in dark ink and is positioned above the typed name and title.

LORIE L. CONNEEN  
Administrative Review Officer

Enclosure

**U.S. Department of Agriculture  
Food and Nutrition Service  
Administrative Review  
Alexandria, VA 22302**

Flatbush Best Deli Inc., )

Appellant, )

v. )

NERO Retailer Compliance Center South, )

Respondent. )

**Case Number: C0145430**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that a six month disqualification from participating as an authorized retailer in the Supplemental Nutrition Assistance Program was properly imposed against Flatbush Best Deli Inc. (hereinafter "Flatbush Deli") by the Northeast Regional Office's (NERO) Retailer Compliance Center South (hereinafter "Compliance Center").

**ISSUE**

The issue accepted for review is whether the Compliance Center took appropriate action, consistent with 7 CFR §278.6(e)(5) in its administration of the Supplemental Nutrition Assistance Program (SNAP) when it imposed a six month period of disqualification against Flatbush Deli on December 15, 2011.

**AUTHORITY**

7 U.S.C. 2023 and its implementing regulations at 7 CFR §279.1 provide that "[A] food retailer or wholesale food concern aggrieved by administrative action under §278.1, §278.6 or §278.7 . . . may file a written request for review of the administrative action with FNS.

**STATEMENT OF THE CASE**

The Department of Agriculture conducted an investigation of the compliance of Flatbush Deli with SNAP law and regulations during the period August 23, 2011 through September 22, 2011. The investigation reported that personnel at Flatbush Deli accepted SNAP benefits in exchange for ineligible merchandise on three separate occasions. Of

items sold during the violative transactions, not less than 37.5 percent were ineligible and included a variety of items best described in regulatory terms as "common nonfood items." Identification information developed during the investigation indicates that these violative transactions were handled by an unidentified male clerk.

As a result of evidence compiled from this investigation, the Compliance Center informed the Appellant, in a letter dated October 25, 2011, that he was charged with violating the terms and conditions of the SNAP regulations, 7 CFR §278.2(a).

In a subsequent correspondence dated November 14, 2011, the Appellant replied to the charges therein indicating that the SNAP violations were committed by a fill-in store employee who inadvertently allowed ineligible items to be purchased with SNAP benefits without the firm's knowledge or approval.

After giving consideration to the evidence and the Appellant's reply, the Compliance Center informed the Appellant, by letter dated December 15, 2011, that Flatbush Deli was disqualified from participation as a retail store in the SNAP for a period of six months.

In a letter dated December 20, 2011, the Appellant, through counsel, appealed the Compliance Center's assessment and requested an administrative review of this action. The appeal was granted and implementation of the sanction has been held in abeyance pending completion of this review.

### **ANALYSIS AND FINDINGS**

In administrative proceedings involving disputes of regulatory actions or inactions, USDA assumes the responsibility of establishing a sufficient factual record to prove or disprove the allegations of the appeal. The record is then reviewed in light of the evidentiary standards and analytical frameworks established by various courts of law.

In appeals of adverse actions, an Appellant bears the burden of proving by a preponderance of the evidence, that the administrative actions should be reversed. That means an Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, might accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

#### **I.**

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6 establishes the authority upon which a period of disqualification may be imposed against an authorized retail food store or wholesale food concern in the event that it has failed to comply with the Food and Nutrition Act of 2008, as amended. 7 CFR §278.6(e)(5) applies to the specific period of disqualification under review. There also exist FNS policy memoranda and clarification letters, which further explain the condition necessary in order to disqualify retail food stores.

7 CFR §278.6(e)(5) reads, "Disqualify the firm for 6 months if it is to be the first sanction for the firm and the evidence shows that personnel of the firm have committed violations such as but not limited to the sale of common nonfood items due to carelessness or poor supervision by the firm's ownership or management."

## II

On review, the Appellant's contentions in the matter are essentially the following:

- The SNAP violations were committed by a fill-in store employee who inadvertently allowed ineligible items to be purchased with SNAP benefits without the firm's knowledge or approval;
- To prevent future SNAP violations from occurring, the Appellant will institute a new training policy ensuring that only well-trained store employees are allowed to handle SNAP transactions;
- This is the first time that the Appellant has been cited for any SNAP violations;
- The total value of the ineligible items that were purchased with EBT benefits was minor;
- Therefore, the Appellant feels that a six month SNAP disqualification is too harsh a punishment for the infractions that occurred;
- The Appellant is requesting that FNS consider issuing a warning letter or imposing a civil money penalty in lieu of a six month SNAP disqualification;
- There is a large Haitian population in the surrounding area that depends on Flatbush Deli for the specialized linguistic services it provides and the variety of ethnic foods it carries;
- Therefore, a SNAP disqualification would pose a hardship on these SNAP customers; and
- A six month SNAP disqualification will also pose a severe financial hardship for Flatbush Deli.

The preceding may represent only a brief summary of the Appellant's contentions in this matter. Please be assured, however, that in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

In regards to the Appellant's contention that the violative SNAP transactions were committed by a fill-in store employee who inadvertently allowed ineligible items to be purchased with SNAP benefits without the firm's knowledge or approval, such a contention cannot be accepted as a valid basis for dismissing any of the charges, or for mitigating the impact of those charges. As owner of the store, the Appellant is liable for all transactions handled by store personnel. Regardless of whom the ownership of a store may utilize to handle store business, ownership is accountable for the proper handling of SNAP benefit transactions. To allow store ownership to disclaim accountability for the acts of persons whom the ownership chooses to utilize to handle store business would render virtually meaningless the enforcement provisions of the Food and Nutrition Act and the enforcement efforts of the USDA.

Moreover, a six month disqualification is the appropriate sanction for violations which result from employees not being fully aware of the SNAP rules. As 7 CFR §278.6(e)(5) of the SNAP regulations states, "Disqualify the firm for 6 months if ... the evidence shows that personnel of the firm have committed violations ... due to carelessness or poor supervision by the firm's ownership or management."

The Appellant contends that in order to prevent future SNAP violations from occurring, he will institute a new training policy ensuring that only well-trained store employees are allowed to handle SNAP transactions. It is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier decision of the Compliance Center. This review is limited to what circumstances were at the basis of the Compliance Center action at the time such action was made. It is not the authority of this review to consider what subsequent remedial actions may have been taken so that the store may begin to comply with program requirements. There is no provision in the SNAP regulations or internal agency policy directives for waiver or reduction of an administrative penalty assessment on the basis of after-the-fact corrective action implemented subsequent to investigative findings of program violations. Therefore, the Appellant's contention that he has taken corrective actions, though they would have been valuable towards preventing future program violations, does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

In regards to the Appellant's contention that this is the first time that he has been cited for any SNAP violations, a record of participation in the SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

The Appellant contends that the total value of the ineligible items that were purchased with EBT benefits was minor; therefore, he feels that a six month SNAP disqualification is too harsh a punishment for the infractions that occurred. However, neither the Food and Nutrition Act of 2008, as amended, nor the regulations issued pursuant thereto cite any minimum dollar amount of SNAP benefits for transactions involving the sale of ineligible items to be defined as violative. No mention of minimum cost or types of ineligibles is cited in Section 278.6(e)(5) of the SNAP regulations, which states that FNS shall disqualify a store for six months if it is to be the first sanction for the firm and the evidence shows that personnel of the firm have committed violations such as the sale of common nonfood items in exchange for SNAP benefits due to carelessness or poor supervision by the firm's ownership or management.

The Appellant is requesting that FNS consider issuing a warning letter or imposing a civil money penalty in lieu of a six month SNAP disqualification. Regarding the issuance of a warning letter, 7 CFR §278.6(e)(5) of the SNAP regulations is specific in that FNS shall "Disqualify the firm for 6 months if it is to be the first sanction for the firm and the evidence shows that personnel of the firm have committed violations such as but not limited to the sale of common nonfood items due to carelessness or poor supervision by the firm's ownership or management". As such, the Compliance Center's decision to

impose a six month SNAP disqualification for Flatbush Deli is appropriate for the SNAP violations that occurred during the investigation period.

Regarding the imposition of a civil money penalty, consideration was given to whether it might be appropriate to impose a civil money penalty in this case in lieu of a period of disqualification. Such a finding is appropriate only if a store sells a substantial variety of staple food items and its disqualification would create a hardship to nutrition assistance program households because there is no other authorized retail food store in the area selling as large a variety of staple food items at comparable prices. In this regard, it is recognized that some degree of inconvenience to SNAP beneficiaries is inherent in the disqualification from the SNAP of any participating food store as the normal shopping pattern of such beneficiaries may be temporarily altered during the period of disqualification.

In this case, however, the Compliance Center has rendered a finding pursuant to 7 CFR §278.6(f) that it would not be appropriate to impose a civil money penalty in lieu of a period of disqualification because of its determination that Flatbush Deli is not the only authorized retail food store in the area "selling as large a variety of staple food items at comparable prices." As the disqualification of the subject store would not create a hardship to customers, as differentiated from potential inconvenience, the finding that a civil money penalty in lieu of disqualification is not appropriate in this case is sustained.

The Appellant contends that there is a large Haitian population in the surrounding area that depends on Flatbush Deli for the specialized linguistic services it provides and the variety of ethnic foods it carries. Therefore, a SNAP disqualification would pose a hardship on these SNAP customers that utilize Flatbush Deli for their staple food needs. The Appellant did not provide sufficient documentation or evidence to validate that Flatbush Deli offers a substantial amount and variety of ethnic foods that are not offered at area retail grocery stores. The Appellant did not provide any vendor invoices or photographs of staple food stock carried by Flatbush Deli to validate this claim. The only documentation provided by the Appellant was a petition (signed by some of Flatbush Deli's customers) stating that Flatbush Deli offers specialized services needed by these customers and that no other deli provides their native foods. However, the petition did not provide any information in which to validate that the customers who signed the petition were indeed SNAP participants. In addition, photographs taken by an FNS Contractor of Flatbush Deli and its staple food stock do not indicate that the subject store carries any specialized/ethnic foods that are not carried at other area authorized SNAP stores. This contention by itself, without sufficient supporting evidence/documentation, does not validate that a six month disqualification from the SNAP would pose a hardship for a substantial number of area SNAP customers. In addition, per the USDA SNAP Retailer Locator and other similar programs, there are 50 authorized retail stores located within .40 miles of Flatbush Deli (to include a super store located 0.1 mile away) that can be safely reached by SNAP customers. These competitors sell a comparable, or better, number and variety of staple food items at comparable, or better, prices and are located within a distance considered adequate by FNS for purposes of assessing for eligibility of a civil money penalty in lieu of disqualification. Therefore, the earlier determination that the disqualification of Flatbush Deli would not create a hardship to customers, as



differentiated from potential inconvenience, is sustained, and a civil money penalty in lieu of disqualification is not appropriate in this case.

The Appellant contends that a six month SNAP disqualification will pose a severe financial hardship for Flatbush Deli. It is recognized that some degree of economic hardship is a likely consequence whenever a store is temporarily disqualified from participation in the SNAP. However, it can only be pointed out that there is no provision in the SNAP regulations or internal agency policy directives for waiver or reduction of an administrative penalty assessment on the basis of possible economic hardship to the firm resulting from imposition of such penalty. Moreover, giving special consideration to economic hardship to the firm would forsake the interests of the program and fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been disqualified from the program in the past for similar violations.

Based on a review of the evidence in this case, it appears that the program violations at issue did, in fact, occur as charged. As noted previously, the charges of violations are based on the findings of a formal USDA investigation. All transactions cited in the letter of charges were conducted by a USDA investigator and all are thoroughly documented. A review of this documentation has yielded no indication of error or discrepancy in any of the reported findings. Rather, the investigative record is specific and accurate with regard to the dates of the violations, the specific ineligible merchandise sold in exchange for SNAP benefits, and in all other critically pertinent detail.

### **CONCLUSION**

Based on the discussion above, the decision to impose a disqualification against Flatbush Best Deli Inc. for a period of six months is sustained.

In accordance with the Food and Nutrition Act of 2008 and the regulations thereunder, this period of disqualification shall become effective thirty (30) days after receipt of this letter. A new application for participation may be submitted by the firm ten (10) days prior to the expiration of this six month period. In accordance with 7 CFR §278.1(b)(4), at the time of any such new application for program participation, the firm would be advised by the office receiving such an application of the necessity, as a store previously sanctioned for program violations, also to post a collateral bond or irrevocable letter of credit as a condition for again being authorized to participate in the program.

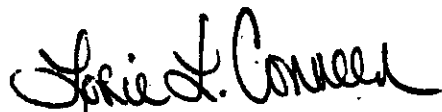
### **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food and Nutrition Act (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR §279.7) with respect to your right to a judicial review of this determination. Please note that if a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which you reside or are engaged in business, or in any court of



record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

Under the Freedom of Information Act (FOIA), it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect, to the extent provided by law, personal information that if released, could constitute an unwarranted invasion of privacy.



LORIE L. CONNEEN  
ADMINISTRATIVE REVIEW OFFICER

May 22, 2012  
DATE



**EDWARD M. KRATT**

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Via Federal Express

December 20, 2011

Chief  
Administrative Review Branch  
USDA, FNS  
3101 Park Center Drive  
Room 438  
Alexandria, Virginia 22302

Re: Mukhtar Saleh and Flatbush Best Deli, Inc.

Dear Sir or Madam:

I am the attorney for Mukhtar Saleh and Flatbush Best Deli, Inc. in connection with the within timely request for your review of the determination, dated December 15, 2011, by Ms. Gilda Torres of the USDA New York Field office, which disqualified said business from participation in the Supplemental Nutrition Assistance Program (SNAP) program for a period of six months.

I respectfully request that, given this timely application, my clients be permitted to continue his participation in the SNAP program pending your review and decision herein.

I have enclosed the December 19, 2011 letter of

Authorization from my clients permitting me to present this application on their behalf. (Exhibit A)

**PROCEDURAL HISTORY**

Enclosed herewith is the following: 1) the letter of October 25, 2011 from the USDA to my clients, specifying and including the charges involved (Exhibit B); 2) the determination letter of December 15, 2011 (Exhibit C); 3) and my clients' pro se letter of November 14, 2011, responding to the charges. (Exhibit D)

The December 15, 2011 determination found, *inter alia.*, that Flatbush Best Deli, Inc. committed the proffered violations, consisting of the sale of ineligible non-food items on three separate occasions. These violations, according to that determination, justified the disqualification of Mr. Saleh's business from participation in the SNAP program for a sixth month period.

It also determined that a hardship civil money penalty (CMP) was not warranted "...because there are other authorized retail stores in the area selling as large a variety of staple foods at comparable prices." (paragraph 2. of December 15, 2011

determination)

It is strongly contended that, under all the circumstances herein, such a penalty is extreme and unwarranted and would cause excessive hardship to the Haitian community that the business serves.

### **ARGUMENT**

#### **A. ALLEGED VIOLATIONS**

It is clear that each of the three alleged violations, which occurred on 8/23/2011, 8/31/2011 and 9/22/2011 (Exhibits A, C and D of October 25, 2011 letter), involved the sale of ineligible items, involving a small amount of value.

Moreover, these alleged sales were made by an alleged employee, described as 50-55 years of age, 6'1"-6'4", and weighing 170-180 pounds.

As Mr. Saleh's letter of November 14, 2011 indicates, he does not employ a person of that description.

While not in a position to affirmatively prove that these incidents did not occur, and accepting the allegations as fact, it is certainly plausible that a "fill-in" worker, unbeknownst to Mr. Saleh, sold these ineligible items, due to his ignorance

of SNAP regulations.

Most significantly, during the USDA investigation of the store on August 29, 2011, an employee, described as a male, 45-50 years of age, 4'2"-4'9", 140-150 pounds, **actually refused to sell ineligible items to the Confidential Informant and Agent.**

Mr. Saleh did not personally work in his store during that period or personally supervise his clerks on those dates. However, he had, in the past, undertaken great efforts and took great pains to learn the Food Stamp regulations and educate his employees regarding same. This was evidenced by his employee's refusal to sell ineligible items on August 29, 2011.

He, himself, committed no violations; nor did he have any knowledge that any violations were occurring in his store.

These limited violations were not indicative of the normal operation of the store, but were aberrational in nature. These transactions involved an unknown individual, whose misapplication of SNAP regulations, not wrongful intent, led to the sale of ineligible items.

It is respectfully contended that the determination of December 15, 2011 did not fairly, completely or accurately consider: 1) the nature and scope of the violations committed by personnel of the firm; (2) the lack of any prior action taken by FNS to warn the firm about the possibility that violations were

occurring; and (3) other evidence that showed the firm's lack of intent to violate the regulations of the Food Stamp Program. Section 278.6(b)(2)(d) of the Regulations.

#### **B. HARDSHIP TO THE HAITIAN COMMUNITY**

Mukhtar Saleh, the President of Flatbush Best Deli, Inc., has served the minority **Haitian** community in Brooklyn, for many years. His small minority-owned business has been a valuable participant in the SNAP program, without incident, for many years.

Given that Flatbush Best Deli, Inc., is a firm that is currently "...selling a substantial variety of staple food items, and the firm's disqualification would cause hardship to food stamp households because there is no other authorized retail food store in the area selling as large a variety of items at comparable prices" (Section 278.6(f)(1) of the Regulations), a modest civil money penalty, in lieu of disqualification for six months, is warranted and appropriate herein, under all of the circumstances.

Specifically, Mr. Saleh's business is particularly and almost exclusively devoted to serving the Haitian community. Mr. Saleh's wife, Ms. Gawhara Saleh, of Moroccan descent, works with Mr. Saleh in the store. She speaks fluent French and Creole. Speaking these languages is essential in communicating with the clients from the Haitian community. Mr. Saleh also employs native Haitian employees, including Patrick Perry, a full-time valuable employee, who assist and facilitate the community in the purchase of indigenous foods and their maintenance of an ethnic-based diet.

Mr. Saleh has greatly assisted recent Haitian refugees, who have relocated following the devastating recent earthquake in Haiti, through his provision thereto of free and low cost food items. He has been a generous contributor to this needy community.

His large and broad variety of staple food items are particular to the native Haitian diet and food culture.

Further, contrary to the December 15, 2011 Determination, there are no "other authorized stores in the area selling as large a variety of staple foods at comparable prices." (See, basis of denying CMP in paragraph 2. of December 15, 2011 Determination letter)

Needless to say, a six month disqualification of Flatbush



Best Deli, Inc. from the SNAP program would, in effect, result in a closure of Mr. Saleh's business and pose an additional undue hardship for his retail **Haitian** clients, who depend exclusively upon his specialized linguistic services and particularized variety of food items.

We respectfully request that you and your Administrative Review Staff carefully review this submission and the determination of December 15, 2011, including the bases therefore.

I believe that, upon doing so, you will conclude that the appropriate penalty, if any, for my client's transgressions is a modest civil money penalty (CMP) in lieu of disqualification from the SNAP Program.

Such a conclusion would not run afoul of USDA precedent, where CMP was imposed, in lieu of disqualification, based upon a need for linguistic and product services to ethnic communities.

In Peter Ramsey and 88 Oriental Foods v. USA and USDA, Civ. 10-975, the United States District Court referenced the decision of the USDA to impose a civil monetary penalty in lieu of disqualification where the store proprietor's "...wife's ability to speak fluent Thai and cater to the Thai-speaking Burmese refugees was needed in the area." (page 2. of the

decision, annexed as Exhibit E hereto)

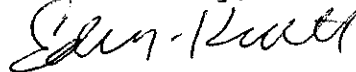
### C. CONCLUSION

In light of all of the above factors, I urge this Administrative Review Staff to reverse the prior determination of the USDA New York Field office. I urge the Review Staff to issue a warning letter, or, in the alternative to impose a civil monetary penalty, in lieu of disqualification.

Please notify me if any additional information is required for your review of this matter.

Thank you for your consideration in this matter.

Sincerely,



Edward M. Kratt  
Attorney for Mukhtar Saleh  
and Flatbush Best Deli, Inc.

encl.

cc: New York Field Office  
Attn: Ms. Gilda Torres

Mr. Mukhtar Saleh

December 19, 2011

Chief, Administrative Review Branch  
USDA, FNS  
3101 Park Center Drive, Room 438  
Alexandria, Virginia 22302

Re: Mukhtar Saleh, Flatbush Best Deli, Inc.

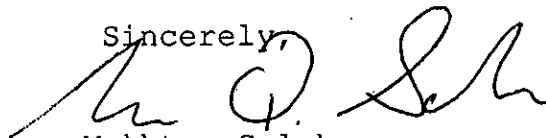
Dear Sir or Madam:

I am the owner and principal of Flatbush Best Deli, Inc. I hereby authorize my attorney, Edward M. Kratt, Esq., whose offices are located at 350 Broadway, Suite 1202, New York, N.Y. 10013 to submit a request to your office, on my behalf, for a review of the disqualification of my firm from the SNAP program. I have enclosed a copy of your letter of December 15, 2011, indicating your determination.

Please permit Mr. Kratt to submit any and all documents and arguments on my behalf.

Thank you for your consideration in this matter.

Sincerely,

  
Mukhtar Saleh  
Owner, Flatbush Best Deli, Inc.

Sworn to before me this  
19th day of December, 2012

  
NOTARY PUBLIC

ERIC SCHLOSSER  
NOTARY PUBLIC, State of New York  
No. 31-4971-9  
Qualified in New York County  
Commission Expires Sept 10/23/2014

EXHIBIT A

Exhibit No. 5137



October 25, 2011

United States  
Department of  
Agriculture

Food and Nutrition  
Service

New York Field  
Office

201 Varick St,  
Rm 609  
New York, NY  
10014-7066

Fax:  
212-620-6948

Mukhtar Saleh  
Flatbush Best Deli Inc  
1218 Flatbush Ave  
Brooklyn, NY 11226

United States Department of Agriculture investigators have investigated your firm. A copy of the report is enclosed. The name(s) of the person(s) who conducted the investigation have been removed. This report contains evidence that violations of the Supplemental Nutrition Assistance Program (SNAP) regulations have occurred in your firm.

Your firm is charged with accepting SNAP benefits in exchange for merchandise, which, in addition to eligible foods, included common non-food items. The misuse of SNAP benefits noted in Exhibit(s) A,C,D violates Section 278.2(a) of the SNAP regulations (enclosed).

Further, the violations in Exhibits A,C,D warrant a disqualification period of 6 months (Section 278.6(e)(5)). Under certain conditions, FNS may impose a civil money penalty (CMP) in lieu of a disqualification (Section 278.6(f)(1)).

If you are an authorized vendor under the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), you may be disqualified from the WIC Program as a result of your disqualification from SNAP. In accordance with current law governing both the SNAP and the WIC Program, such a WIC Program disqualification is not subject to administrative or judicial review under the WIC Program. A CMP from the Supplemental Nutrition Assistance Program may also result in a WIC Program disqualification, but such a disqualification would be subject to administrative and/or judicial review.

In the event that you sell or transfer ownership of your store subsequent to your disqualification, you will be subject to and liable for a CMP as provided by SNAP regulations Sections 278.6(f)(2),(3) and (4). The amount of this sale or transfer CMP will be calculated based on SNAP regulations 278.6(g).

SNAP regulations Section 278.6(b) explain your right to reply to the charges, and Sections 278.6(c) through (m) describe the procedures we will follow in making a decision in this case. If you wish to present any information, explanation, or evidence you have regarding these charges, you must reply within 10 days of the date you receive this letter. You may respond either orally or in writing. To respond orally, please contact 212-620-7360 to schedule an appointment. You may have legal

AN EQUAL OPPORTUNITY EMPLOYER

EXHIBIT B

Exhibit No. 5127

counsel present at this meeting. If you schedule but fail to keep the appointment, we will consider that action as a non-response to this letter.

We will fully consider your reply and any documentation you provide before we make a final decision in this matter. However, if we do not hear from you within 10 days of receipt of this letter, we will make a decision based on the information available to us, and advise you of that decision in writing.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gilda Torres", is written over the typed name.

GILDA TORRES  
Officer-In-Charge  
New York, NY Field Office

Enclosure

US DEPARTMENT OF AGRICULTURE - FOOD AND NUTRITION SERVICE		EXHIBIT	A
<b>TRANSACTION REPORT</b>		PAGE	1
<b>A. CASE IDENTIFICATION DATA</b>		<b>3. STORE NAME AND ADDRESS</b>	
1. RETAILER INVESTIGATIONS BRANCH CASE IDENTIFICATION NUMBER  TR31100		Flatbush Best Deli Inc 1218 Flatbush Ave  Brooklyn NY 11226	
2. DATE 8/23/2011			

**B. SUMMARY OF TRANSACTION**

- The following is a description of an EBT transaction conducted by a confidential informant (CI) under the supervision of the reporting FNS RIB Investigator. All data is taken from a signed statement of the CI which is on file in the Retailer Investigations Branch Area Office.
- On the above date, the CI accompanied me to the vicinity of the subject store. The CI turned over to me all EBT cards and cash that was in his/her possession. I furnished the CI with EBT card(s) having a total value of \$100.62, as specified in Section E below. After the transaction, the CI delivered to me the items purchased as described in Section C below and also the EBT card(s), and any cash as specified in Section E below.
- On the above date, at about (time) \*Redacted, CI entered subject store. CI selected the items specified in Section C below. This store has 1 primary grocery check-out registers, 1 (was/were) in operation at the time of purchase. At the check-out there ( was/were) 3 person(s) in line ahead of CI and 4 person(s) in line behind CI. The clerk sold to CI the items listed in Section C 2 and 3, below at a total cost of \$17.50. CI gave the clerk the EBT card and Supplemental Nutrition Assistance Program (SNAP) benefits were deducted from it by the clerk as described in Section E below. CI departed the store at about \*Redacted.

**OTHER COMMENTS****INELIGIBLE ITEMS PURCHASED**

\*Redacted - MATERIAL DELETED PURSUANT TO 5 U.S.C SECTION 552(b) (6) and 552(b) (7) (C).

FORM FNS-413 (PAGE 1 OF 3) - (7-98) PREVIOUS EDITIONS OBSOLETE.

<b>C. SUMMARY OF PURCHASE</b>		<b>CASE NUMBER</b>	<b>EXHIBIT</b>
<b>1. PURCHASE PRICE CHARGED BY CLERK</b>	<b>17.50</b>	<b>TR31100</b>	<b>A</b>
			<b>PAGE</b>
			<b>2</b>

**2. INELIGIBLE ITEMS**

QUANTITY AND DESCRIPTION	PRICE *
1 - 16 FL OZ BOTTLE OF "DERMASSAGE" DISH SOAP	.99
1 - 28 FL OZ BOTTLE OF "KING PINE" MULTI-PURPOSE CLEANER	.99
1 - 32 FL OZ BOTTLE OF "KRASDALE" AMMONIA	.99

**3. ELIGIBLE ITEMS**

QUANTITY AND DESCRIPTION	PRICE *
1 - BOX OF CEREAL	NPI
1 - PACK OF COOKIES	NPI
1 - BOTTLE OF APPLESAUCE	2.49
1 - BOX OF SAZON SEASONING MIX	1.99
1 - BAG OF CHIPS	NPI

**4. ITEMS PURCHASED WITH CASH CHANGE**

QUANTITY AND DESCRIPTION	PRICE *
--------------------------	---------

**5. REFUSALS**

QUANTITY AND DESCRIPTION	PRICE *
--------------------------	---------

\*NPI=No Price Indicated or Price Illegible

\*Redacted - MATERIAL DELETED PURSUANT TO 5 U.S.C SECTION 552(b) (6) and 552(b) (7) (C).

FORM FNS-413 (PAGE 2 OF 3) - (7-98) PREVIOUS EDITIONS OBSOLETE.

D. APPEARANCE OF CLERK					CASE NUMBER	EXHIBIT
1. SEX	2. AGE	3. HEIGHT RANGE	4. WEIGHT	5. HAIR COLOR	TR31100	A
Male	50 - 55	6'1" - 6'4"	170 - 180	Black	Result	PAGE 3
6. OTHER IDENTIFYING INFORMATION:				7. IDENTIFIED DURING TRANSACTION AS: (Name)		
SEEMS MIDDLE EASTERN				NO		
				(Title, Relationship to owner):		
				UNKNOWN		
				8. MEANS OF IDENTIFICATION:		
				N/A		
9. DETAILS OF TRANSACTION AT THE CASH REGISTER						

CI PLACED FOODS AND NON-FOODS ON THE COUNTER AND GAVE CLERK EBT CARD. CLERK TOTALED ALL ITEMS, PROCESSED TRANSACTION, GAVE CI PURCHASE, RECEIPT AND EBT CARD. THE CLERK MADE NO COMMENT ABOUT THE INELIGIBLE ITEMS PURCHASED.

#### E. RECORD OF BENEFITS ISSUED AND USED IN THE TRANSACTION

1. EBT Benefits Issued, Used and Returned			
EBT Card Number	A. Issued Value	B. Used Value	C. Returned Value
*Redacted	\$100.62	\$17.50	\$83.12

EBT Receipt Included? Yes

Cash Register Tape Included? No

#### 2. ADDITIONAL COMMENTS

F. CERTIFICATION	Trafficking Cash Received:
<p>This declaration consists of <u>3</u> pages. I have signed or initialed each page. The facts stated in this declaration are true to my knowledge. If I am called to testify as a witness in my proceeding, I am competent to testify to the matters stated herein.</p> <p>Further declarant sayeth not.</p> <p>I declare under penalty of perjury the foregoing is true and correct.</p>	<p>1. DATE OF REPORT</p> <p>4. INVESTIGATOR'S SIGNATURE:</p> <p>*Redacted</p>

\*Redacted - MATERIAL DELETED PURSUANT TO 5 U.S.C SECTION 552(b) (6) and 552(b) (7) (C).

FORM FNS-413 (PAGE 3 OF 3) - (7-98) PREVIOUS EDITION OBSOLETE.



US DEPARTMENT OF AGRICULTURE - FOOD AND NUTRITION SERVICE		EXHIBIT	B
TRANSACTION REPORT		PAGE	1
A. CASE IDENTIFICATION DATA		3. STORE NAME AND ADDRESS	
1. RETAILER INVESTIGATIONS BRANCH CASE IDENTIFICATION NUMBER  TR31100		Flatbush Best Deli Inc  1218 Flatbush Ave  Brooklyn NY 11226	
2. DATE 8/29/2011			

**B. SUMMARY OF TRANSACTION**

1. The following is a description of an EBT transaction conducted by a confidential informant (CI) under the supervision of the reporting FNS RIB Investigator. All data is taken from a signed statement of the CI which is on file in the Retailer Investigations Branch Area Office.
2. On the above date, the CI accompanied me to the vicinity of the subject store. The CI turned over to me all EBT cards and cash that was in his/her possession. I furnished the CI with EBT card(s) having a total value of \$286.23, as specified in Section E below. After the transaction, the CI delivered to me the items purchased as described in Section C below and also the EBT card(s), and any cash as specified in Section E below.
3. On the above date, at about (time) \*Redacted, CI entered subject store. CI selected the items specified in Section C below. This store has 1 primary grocery check-out registers, 1 (was/were) in operation at the time of purchase. At the check-out there ( was/were) 1 person(s) in line ahead of CI and 3 person(s) in line behind CI. The clerk sold to CI the items listed in Section C 2 and 3, below at a total cost of \$12.46. CI gave the clerk the EBT card and Supplemental Nutrition Assistance Program (SNAP) benefits were deducted from it by the clerk as described in Section E below. CI departed the store at about \*Redacted.

**OTHER COMMENTS**

INELIGIBLE ITEMS REFUSED

\*Redacted - MATERIAL DELETED PURSUANT TO 5 U.S.C SECTION 552(b) (6) and 552(b) (7) (C).

FORM FNS-413 (PAGE 1 OF 3) - (7-98) PREVIOUS EDITIONS OBSOLETE.

<b>C. SUMMARY OF PURCHASE</b>		<b>CASE NUMBER</b>	<b>EXHIBIT</b>	<b>B</b>
1. PURCHASE PRICE CHARGED BY CLERK	12.46	TR31100	<b>PAGE</b>	<b>2</b>

## 2. INELIGIBLE ITEMS

QUANTITY AND DESCRIPTION	PRICE *
--------------------------	---------

## 3. ELIGIBLE ITEMS

QUANTITY AND DESCRIPTION	PRICE *
1 - BOX OF CRACKERS	3.99
1 - BAG OF RICE	2.99
1 - CAN OF ICE TEA MIX	NPI
1 - CAN OF PEAS	NPI
1 - BAG OF CHIPS	NPI

## 4. ITEMS PURCHASED WITH CASH CHANGE

QUANTITY AND DESCRIPTION	PRICE *
--------------------------	---------

## 5. REFUSALS

QUANTITY AND DESCRIPTION	PRICE *
PACK OF NAPKINS	
PACK OF DISH SPONGES	
BOX OF STEEL WOOL PADS	

\*NPI=No Price Indicated or Price Illegible

\*Redacted - MATERIAL DELETED PURSUANT TO 5 U.S.C SECTION 552(b) (6) and 552(b) (7) (C).

FORM FNS-413 (PAGE 2 OF 3) - (7-98) PREVIOUS EDITIONS OBSOLETE.

<b>D. APPEARANCE OF CLERK</b>					<b>CASE NUMBER</b>		<b>EX-1BIT</b>	
1. SEX	2. AGE	3. HEIGHT RANGE	4. WEIGHT	5. HAIR COLOR	TR31100		B	
Male	45 - 50	4'2" - 4'5"	140 - 150	Black	Result	N	PAGE	3
6. OTHER IDENTIFYING INFORMATION:				7. IDENTIFIED DURING TRANSACTION AS: (Name)				
SEEMS MIDDLE EASTERN				NO				
				(Title, Relationship to owner):				
				UNKNOWN				
				8. MEANS OF IDENTIFICATION:				
				N/A				
9. DETAILS OF TRANSACTION AT THE CASH REGISTER								

CI PLACED FOODS AND NON-FOODS ON THE COUNTER AND GAVE CLERK EBT CARD. CLERK SEPARATED THE NON-FOODS AND TOLD CI YOU CANNOT BUY THEM WITH FOOD STAMPS. CI SAID OK. CLERK TOTALED FOOD ITEMS, PROCESSED TRANSACTION, GAVE CI PURCHASE, RECEIPT AND EBT CARD.

#### E. RECORD OF BENEFITS ISSUED AND USED IN THE TRANSACTION

1. EBT Benefits Issued, Used and Returned			
EBT Card Number	A. Issued Value	B. Used Value	C. Returned Value
*Redacted	\$286.23	\$12.46	\$273.77

EBT Receipt Included? Yes

Cash Register Tape Included? No

#### 2. ADDITIONAL COMMENTS

<b>F. CERTIFICATION</b>	<b>Trafficking Cash Received:</b>
<p>This declaration consists of <u>3</u> pages. I have signed or initialed each page. The facts stated in this declaration are true to my knowledge. If I am called to testify as a witness in my proceeding, I am competent to testify to the matters stated herein.</p> <p>Further declarant sayeth not.</p> <p>I declare under penalty of perjury the foregoing is true and correct.</p>	<p>1. DATE OF REPORT</p> <p>4. INVESTIGATOR'S SIGNATURE</p> <p>*Redacted</p>

\*Redacted - MATERIAL DELETED PURSUANT TO 5 U.S.C SECTION 552(b) (6) and 552(b) (7) (C).

FORM FNS-413 (PAGE 3 OF 3) - (7-98) PREVIOUS EDITION OBSOLETE.

US DEPARTMENT OF AGRICULTURE - FOOD AND NUTRITION SERVICE		EXHIBIT	C
<b>TRANSACTION REPORT</b>		PAGE	1
<b>A. CASE IDENTIFICATION DATA</b>		<b>3. STORE NAME AND ADDRESS</b>	
1. RETAILER INVESTIGATIONS BRANCH CASE IDENTIFICATION NUMBER  TR31100		Flatbush Best Deli Inc 1218 Flatbush Ave  Brooklyn NY 11226	
2. DATE 8/31/2011			

**B. SUMMARY OF TRANSACTION**

- The following is a description of an EBT transaction conducted by a confidential informant (CI) under the supervision of the reporting FNS RIB Investigator. All data is taken from a signed statement of the CI which is on file in the Retailer Investigations Branch Area Office.
- On the above date, the CI accompanied me to the vicinity of the subject store. The CI turned over to me all EBT cards and cash that was in his/her possession. I furnished the CI with EBT card(s) having a total value of \$158.48, as specified in Section E below. After the transaction, the CI delivered to me the items purchased as described in Section C below and also the EBT card(s), and any cash as specified in Section E below.
- On the above date, at about (time) \*Redacted, CI entered subject store. CI selected the items specified in Section C below. This store has 1 primary grocery check-out registers, 1 (was/were) in operation at the time of purchase. At the check-out there ( was/were) 1 person(s) in line ahead of CI and 2 person(s) in line behind CI. The clerk sold to CI the items listed in Section C 2 and 3, below at a total cost of \$12.00. CI gave the clerk the EBT card and Supplemental Nutrition Assistance Program (SNAP) benefits were deducted from it by the clerk as described in Section E below. CI departed the store at about \*Redacted.

**OTHER COMMENTS**

INELIGIBLE ITEMS PURCHASED

\*Redacted - MATERIAL DELETED PURSUANT TO 5 U.S.C SECTION 552(b) (6) and 552(b) (7) (C).

FORM FNS-413 (PAGE 1 OF 3) - (7-98) PREVIOUS EDITIONS OBSOLETE.

<b>C. SUMMARY OF PURCHASE</b>		<b>CASE NUMBER</b>	<b>EXHIBIT</b> C
1. PURCHASE PRICE CHARGED BY CLERK	12.00	TR31100	<b>PAGE</b> 2

**2. INELIGIBLE ITEMS**

QUANTITY AND DESCRIPTION	PRICE *
1 - 15 COUNT BOX OF "KRASDALE" 13 GALLON TRASH BAGS	1.69
1 - 14 OZ CAN OF "AJAX" POWDERED CLEANSER	NPI
1 - 1 PACK "CHORE BOY" DISH SOAP	1.10

**3. ELIGIBLE ITEMS**

QUANTITY AND DESCRIPTION	PRICE *
1 - BOTTLE OF APPLE SAUCE	2.49
1 - BOX OF TEA BAGS	1.49
1 - BOX OF PASTA	NPI
1 - BAG OF CHIPS	NPI

**4. ITEMS PURCHASED WITH CASH CHANGE**

QUANTITY AND DESCRIPTION	PRICE *
--------------------------	---------

**5. REFUSALS**

QUANTITY AND DESCRIPTION	PRICE *
--------------------------	---------

\*NPI=No Price Indicated or Price Illegible

\*Redacted - MATERIAL DELETED PURSUANT TO 5 U.S.C SECTION 552(b) (6) and 552(b) (7) (C).

FORM FNS-413 (PAGE 2 OF 3) - (7-98) PREVIOUS EDITIONS OBSOLETE.

D. APPEARANCE OF CLERK					CASE NUMBER	EXHIBIT
1. SEX	2. AGE	3. HEIGHT RANGE	4. WEIGHT	5. HAIR COLOR	TR31100	C
Male	50 - 55	6'1" - 6'4"	170 - 180	Black	Result	P
6. OTHER IDENTIFYING INFORMATION:					7. IDENTIFIED DURING TRANSACTION AS: (Name)	
Clerk same as Exhibit A					NO	
					(Title, Relationship to owner):	
					UNKNOWN	
8. MEANS OF IDENTIFICATION:					N/A	
9. DETAILS OF TRANSACTION AT THE CASH REGISTER						

CI PLACED FOODS AND NON-FOODS ON THE COUNTER AND GAVE CLERK EBT CARD. CLERK TCTALED ALL ITEMS, PROCESSED TRANSACTION, GAVE CI PURCHASE, RECEIPT AND EBT CARD. THE CLERK MADE NO COMMENT ABOUT THE INELIGIBLE ITEMS PURCHASED.

#### E. RECORD OF BENEFITS ISSUED AND USED IN THE TRANSACTION

1. EBT Benefits Issued, Used and Returned			
EBT Card Number	A. Issued Value	B. Used Value	C. Returned Value
*Redacted	\$158.48	\$12.00	\$146.48

EBT Receipt Included? Yes

Cash Register Tape Included? No

#### 2. ADDITIONAL COMMENTS

F. CERTIFICATION	Trafficking Cash Received:
<p>This declaration consists of <u>3</u> pages. I have signed or initialed each page. The facts stated in this declaration are true to my knowledge. If I am called to testify as a witness in my proceeding, I am competent to testify to the matters stated herein.</p> <p>Further declarant sayeth not.</p> <p>I declare under penalty of perjury the foregoing is true and correct.</p>	<p>1. DATE OF REPORT</p> <p>4. INVESTIGATOR'S SIGNATURE</p> <p>*Redacted</p>

\*Redacted - MATERIAL DELETED PURSUANT TO 5 U.S.C SECTION 552(b) (6) and 552(b) (7) (C).

FORM FNS-413 (PAGE 3 OF 3) - (7-98) PREVIOUS EDITION OBSOLETE.

US DEPARTMENT OF AGRICULTURE - FOOD AND NUTRITION SERVICE		EXHIBIT	D
<b>TRANSACTION REPORT</b>		PAGE	1
<b>A. CASE IDENTIFICATION DATA</b>		<b>3. STORE NAME AND ADDRESS</b>	
1. RETAILER INVESTIGATIONS BRANCH CASE IDENTIFICATION NUMBER  TR31100		Flatbush Best Deli Inc  1218 Flatbush Ave  Brooklyn NY 11226	
2. DATE 9/22/2011			

**B. SUMMARY OF TRANSACTION**

- The following is a description of an EBT transaction conducted by a confidential informant (CI) under the supervision of the reporting FNS RIB Investigator. All data is taken from a signed statement of the CI which is on file in the Retailer Investigations Branch Area Office.
- On the above date, the CI accompanied me to the vicinity of the subject store. The CI turned over to me all EBT cards and cash that was in his/her possession. I furnished the CI with EBT card(s) having a total value of \$274.90, as specified in Section E below. After the transaction, the CI delivered to me the items purchased as described in Section C below and also the EBT card(s), and any cash as specified in Section E below.
- On the above date, at about (time) \*Redacted, CI entered subject store. CI selected the items specified in Section C below. This store has 1 primary grocery check-out registers, 1 (was/were) in operation at the time of purchase. At the check-out there ( was/were) 3 person(s) in line ahead of CI and 4 person(s) in line behind CI. The clerk sold to CI the items listed in Section C 2 and 3, below at a total cost of \$18.00. CI gave the clerk the EBT card and Supplemental Nutrition Assistance Program (SNAP) benefits were deducted from it by the clerk as described in Section E below. CI departed the store at about \*Redacted.

**OTHER COMMENTS**

INELIGIBLE ITEMS PURCHASED, TRAFFICKING REFUSED.

\*Redacted - MATERIAL DELETED PURSUANT TO 5 U.S.C SECTION 552(b) (6) and 552(b) (7) (C).

FORM FNS-413 (PAGE 1 OF 3) - (7-98) PREVIOUS EDITIONS OBSOLETE.

<b>C. SUMMARY OF PURCHASE</b>		<b>CASE NUMBER</b>	<b>EXHIBIT</b>	<b>D</b>
1. PURCHASE PRICE CHARGED BY CLERK	18.00	TR31100	PAGE	2

## 2. INELIGIBLE ITEMS

QUANTITY AND DESCRIPTION	PRICE *
1 - 109.2 SQUARE FEET 1000 SHEETS OF "MARCAL" BATH TISSUE	NPI
1 - 10 COUNT BOX OF "KRASDALE" 30 GALLON TRASH BAGS	1.79
1 - 25 SQUARE FEET BOX OF "BRAND NAME" ALUMINUM FOIL	0.99

## 3. ELIGIBLE ITEMS

QUANTITY AND DESCRIPTION	PRICE *
1 - JAR OF COLE SLAW	NPI
1 - JAR OF EGG SALAD	NPI
1 - PACK OF COOKIES	1.49
1 - PACK OF CRACKERS	1.79
1 - CAN OF SOUP	NPI

## 4. ITEMS PURCHASED WITH CASH CHANGE

QUANTITY AND DESCRIPTION	PRICE *
--------------------------	---------

## 5. REFUSALS

QUANTITY AND DESCRIPTION	PRICE *
CASH	

\*NPI=No Price Indicated or Price Illegible

\*Redacted - MATERIAL DELETED PURSUANT TO 5 U.S.C SECTION 552(b) (6) and 552(b) (7) (C).

FORM FNS-413 (PAGE 2 OF 3) - (7-98) PREVIOUS EDITIONS OBSOLETE.



D. APPEARANCE OF CLERK					CASE NUMBER	EXHIBIT
1. SEX	2. AGE	3. HEIGHT RANGE	4. WEIGHT	5. HAIR COLOR	TR31100	D
Male	50 - 55	6'1" - 6'4"	170 - 180	Black	Result	PAGE 3
6. OTHER IDENTIFYING INFORMATION:				7. IDENTIFIED DURING TRANSACTION AS: (Name)		
Clerk same as Exhibit A				NO		
				(Title, Relationship to owner):		
				UNKNOWN		
				8. MEANS OF IDENTIFICATION:		
				N/A		
9. DETAILS OF TRANSACTION AT THE CASH REGISTER						

CI PLACED FOODS AND NON-FOODS ON THE COUNTER AND GAVE CLERK EBT CARD. AFTER CLERK TOTALED AND PROCESSED TRANSACTION, CI ASKED TO EXCHANGE BENEFITS FOR CASH. CLERK SAID NO, THEN GAVE CI PURCHASE, RECEIPT AND EBT CARD. CLERK MADE NO COMMENT ABOUT THE INELIGIBLE ITEMS PURCHASED.

#### E. RECORD OF BENEFITS ISSUED AND USED IN THE TRANSACTION

1. EBT Benefits Issued, Used and Returned			
EBT Card Number	A. Issued Value	B. Used Value	C. Returned Value
*Redacted	\$274.90	\$16.50	\$258.40
*Redacted	\$258.40	\$1.50	\$256.90

EBT Receipt Included? Yes

Cash Register Tape Included? No

#### 2. ADDITIONAL COMMENTS

CLERK CONDUCTED TWO TRANSACTIONS, ONE ITEM WAS INADVERTENTLY NOT TOTALED WITH THE FIRST TRANSACTION.

F. CERTIFICATION	Trafficking Cash Received:
<p>This declaration consists of <u>3</u> pages. I have signed or initialed each page. The facts stated in this declaration are true to my knowledge. If I am called to testify as a witness in my proceeding, I am competent to testify to the matters stated herein.</p> <p>Further declarant sayeth not.</p> <p>I declare under penalty of perjury the foregoing is true and correct.</p>	<p>1. DATE OF REPORT</p> <p>4. INVESTIGATOR'S SIGNATURE</p> <p>*Redacted</p>

\*Redacted - MATERIAL DELETED PURSUANT TO 5 U.S.C SECTION 552(b) (6) and 552(b) (7) (C).

FORM FNS-413 (PAGE 3 OF 3) - (7-98) PREVIOUS EDITION OBSOLETE.



United States  
Department of  
Agriculture

December 15, 2011

Food and Nutrition  
Service

New York Field  
Office

Mukhtar Saleh  
Flatbush Best Deli Inc  
1218 Flatbush Ave  
Brooklyn, NY 11226

201 Varick St,  
Rm 609  
New York, NY  
10014-7066

Phone:  
212-620-7360  
Fax:  
212-620-6948

Consideration has been given to the information and evidence available to us relating to our letter of charges dated October 25, 2011, and to your reply of November 14, 2011. We find that the violations cited in our charge letter occurred at your firm.

We considered your eligibility for a hardship civil money penalty (CMP) according to the terms of Section 278.6(f)(1) of the Supplemental Nutrition Assistance Program (SNAP) regulations (enclosed). We have determined that you are not eligible for the CMP because there are other authorized retail stores in the area selling as large a variety of staple foods at comparable prices.

Therefore, your firm shall be disqualified from the Supplemental Nutrition Assistance Program for a period of 6 months. This is in accordance with Section 278.6 (a) and (e) of the SNAP regulations.

This disqualification will become effective on the 10th calendar day following your receipt of this letter. If the 10th calendar day is a Saturday, Sunday or legal (Federal) holiday, the disqualification will be effective the next day which is not a Saturday, Sunday or legal (Federal) holiday.

This determination will be final unless you submit a written request for review to the Chief, Administrative Review Branch, USDA, FNS, 3101 Park Center Drive, Room 438, Alexandria, Virginia 22302. Your request for review must be postmarked by midnight of the 10th calendar day after you receive this letter, in order to be considered timely. If the 10th day of the period for requesting review falls on a Saturday, Sunday or legal (Federal) holiday, a request for review will be timely if it is postmarked the next day which is not a Saturday, Sunday or legal (Federal) holiday. The rules governing your review rights are contained in Section 278.6(n) and Part 279 of the SNAP regulations.

If a timely request for review is made, you may continue to accept and redeem SNAP benefits until the review officer has made a decision on your request.

This determination shall not preclude the Department of Agriculture or any other agency or department of the United States from taking further action to collect any claim determined under SNAP regulations or under any other pertinent statutes or

AN EQUAL OPPORTUNITY EMPLOYER

EXHIBIT C

Branding No. 5135

regulations, nor shall this determination preclude prosecution under any applicable laws.

Your Electronic Benefit Transfer (EBT) processor will be advised to disable your EBT connection. Your EBT machine should be returned to your EBT vendor. If it is determined that you accepted SNAP benefits after the effective date of disqualification, you will be subject to a monetary fine per Section 278.6(m) of the SNAP regulations and possible prosecution under applicable laws.

If you are an authorized vendor under the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), you may be disqualified from the WIC Program as a result of your disqualification from the SNAP. In accordance with current law governing both the SNAP and the WIC Program, such a WIC Program disqualification is not subject to administrative or judicial review under the WIC Program. A CMP from the Supplemental Nutrition Assistance Program may also result in a WIC Program disqualification, but such a disqualification would be subject to administrative and/or judicial review.

In the event that you sell or transfer ownership of your store subsequent to your disqualification, you will be subject to and liable for a CMP as provided by SNAP regulations Sections 278.6(f)(2), (3), and (4). The amount of this sale or transfer CMP will be calculated based on SNAP regulations at 278.6(g).

You may apply for authorization 10 days prior to the end of your disqualification period.

Sincerely,



GILDA TORRES  
Officer-In-Charge  
New York, NY Field Office

Enclosure

Nov 14, 2011

**Mukhtar Saleh**  
**Flatbush Best Deli Inc.**  
**1218 Flatbush Ave**  
**Brooklyn NY 11226**

To whom it may Concern:

My name is Mukhtar Saleh the owner Flatbush Best Deli Inc located at 1218 Flatbush ave brooklyn ny 11226. I Am writing in response to the charge letter notifying my busniess of accepting SNAP benefits in exchange for merchandise

I was totally shocked to find theses charges against my busniess , I never ever had any problem with the law before. I carefully went through the report, I looked at the date of each transation and the description of the clerk. I carefully looked at each Exhibits A,B,C,D on the report. On Exhibit B matches employee that have been working with me since my store been open back in August 2009. He declined the sale of non-food items. But on the other hand Exhibits A,C,D all are the same person and none of my employee match that description the oldest worker I ever had is 39 years old he is 4'9" weights 142lbs it matches the descrition of exhibit B and the tallest i ever had working for me is 5'9".

I am not in a postion to deny the fact if any of my low trained employee might had entered a transaction that should have not had happened at all. We have a very strict store policy, I can assure the USDA that any such lapses were not in accordance with store policy and training. I would institute a new training policy ensuring that only well trained employees would handle SNAP trasaction.

My busniess will suffer great lose if im disqualified for a period of 6 months. There are more people on Food Nutrition Program(FNP) then ever before, since 2006 people on the FNP nearly doubled from 1million to almost 1.9million in the city alone. Especially people in Flatbush area.

My wife works with me in the store she is from Morocco she speaks fluent

in French and Creole and i also have an emplyee that is from Haiti. There are a large amount of haitians living in this community. A lot of them dont speak english it will make it very difficult for the people in the community if you disqualified my busniess. There isn't a lot of stores in the area that speak the French language. It will give the Haitian people a hardship if I am disqualified for 6 months.

I Plea for synpathy I am very sorry of this incident it is going make it hard for the community and for me please make this be warning or impose a resonable civil money penalty I've worked very hard in my life never had a problem with the law before please take things for consideration. If anyone whould like to contact me regarding this matter please feel free to call my cell phone at (718)219-3385 thank you.

Sincerely,

---

Mukhtar Saleh

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

Peter Ratsamy and 88 Oriental Foods,

Plaintiffs,

v.

United States of America and United  
States Department of Agriculture  
through its agency the Food and Nutrition Service,

Defendants.

**MEMORANDUM OPINION  
AND ORDER**

Civil No. 10-975 ADM/JJK

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William Ford, Esq., Hopkins, MN, on behalf of Plaintiffs.

Ana H. Voss, Esq., Assistant United States Attorney, Minneapolis, MN, on behalf of Defendants.

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**I. INTRODUCTION**

On March 31, 2011, the undersigned United States District Judge heard oral argument on Peter Ratsamy ("Ratsamy") and 88 Oriental Foods' (collectively referred to as "Plaintiffs") Motion for Summary Judgment [Docket No. 17] and Defendants United States of America and United States Department of Agriculture ("USDA") through its agency the Food and Nutrition Service's ("FNS") (collectively referred to as "Defendants") Motion for Summary Judgment [Docket No. 9]. For the reasons set forth below, Plaintiffs' Motion is denied and Defendants' Motion is granted.

**II. BACKGROUND<sup>1</sup>**

The facts of this case are undisputed. Ratsamy is the owner of 88 Oriental Foods, a

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<sup>1</sup> On a motion for summary judgment, the Court views the evidence in the light most favorable to the nonmoving party. Ludwig v. Anderson, 54 F.3d 465, 470 (8th Cir. 1995). As both parties have moved for summary judgment, any disputed facts are noted.

retail store in St. Paul, Minnesota. Compl. ¶ 2. 88 Oriental Foods is a participant in the food stamp program, now known as the Supplemental Nutrition Assistance Program ("SNAP")<sup>2</sup> administered by the United States Department of Agriculture's Food and Nutrition Service. An undercover investigation between February and August 2009 revealed that on six of seven attempted buy occasions, an employee of 88 Oriental Foods sold ineligible items in violation of program regulations.<sup>3</sup>

On August 31, 2009, the USDA issued a Charge Letter notifying Ratsamy that his store was found to have accepted SNAP benefits in exchange for merchandise in violation of 7 C.F.R. 278.2(a). A.R. [Docket No. 12] at 40. The letter informed Ratsamy that the violation warranted a six-month disqualification period or, under certain circumstances, a civil monetary penalty in lieu of a disqualification. *Id.* Ratsamy's counsel replied seeking a warning letter as the appropriate sanction for the violation or, in the alternative, a civil monetary penalty in lieu of a disqualification arguing that Ratsamy's wife's ability to speak fluent Thai and cater to the Thai-speaking Burmese refugees was needed in the area. *Id.* at 68-69. In response, the USDA determined that disqualifying Ratsamy's store from participating in the SNAP program would cause hardship to the Burmese population in the area and instead assessed a civil monetary

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<sup>2</sup> In 2008, Congress amended the Food Stamp Act, renaming it the Food and Nutrition Act and renamed the "food stamp program" the "SNAP," but it did not substantively change the statutory provisions at issue in this case.

<sup>3</sup> Among the ineligible food items sold were mostly household items of nominal value including plastic spoons, toothbrushes, toothpaste, toilet tissue, aluminum foil, and a scrub sponge. The total value of the ineligible goods was \$66.00.

penalty in accordance with the formula set forth in 7 C.F.R. § 278.6(g)<sup>4</sup> in the amount of \$27,300.00. *Id.* at 83.

Ratsamy's counsel requested an administrative review of the imposition of the \$27,300.00 penalty arguing that "the penalty sought to be imposed in this case is clearly out of proportion to the offense." *Id.* at 103. On February 24, 2010, the USDA issued its Final Agency Decision affirming the decision and upholding the amount of the civil monetary penalty. *Id.* at 114, 115-121.

On March 26, 2010, Ratsamy filed suit seeking judicial review of the USDA's decision to impose the civil monetary penalty. Both parties moved for summary judgment.

### **III. DISCUSSION**

#### **A. Summary Judgment Standard**

Federal Rule of Civil Procedure 56(c) provides that summary judgment shall issue "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the

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<sup>4</sup> The formula is as follows:

(1) Determine the firm's average monthly redemptions of coupons for the 12-month period ending with the month immediately preceding that month during which the firm was charged with violations.

(2) Multiply the average monthly redemption figure by 10 percent.

(3) Multiply the product arrived at in paragraph (g)(2) by the number of months for which the firm would have been disqualified under paragraph (e) of this section. The civil money penalty may not exceed an amount specified in § 3.91(b)(3)(i) of this title for each violation.

7 C.F.R. § 278.6(g).



affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c); see Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986); Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). On a motion for summary judgment, the Court views the evidence in the light most favorable to the nonmoving party. Ludwig v. Anderson, 54 F.3d at 470. The nonmoving party may not “rest on mere allegations or denials, but must demonstrate on the record the existence of specific facts which create a genuine issue for trial.” Krenik v. County of Le Sueur, 47 F.3d 953, 957 (8th Cir. 1995).

#### **B. Eighth Amendment Violation**

Ratsamy’s lone argument<sup>5</sup> is that the civil monetary penalty is excessive and disproportionate to the wrongdoing, in violation of the Excessive Fines Clause of the Eighth Amendment. The Eighth Amendment to the United States Constitution provides: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. amend. VIII.

A monetary assessment imposed as punishment is a “fine” within the meaning of the Excessive Fines Clause. United States v. Bajakajian, 524 U.S. 321, 327-34 (1998). The government asserts that it has found no case in which a court has held that the civil monetary penalty at issue here constitutes a “fine” for purposes of the Eighth Amendment. This question

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<sup>5</sup> While the government briefed additional issues, namely, whether the civil monetary penalty runs afoul of the Due Process clause or the Administrative Procedures Act, Plaintiffs’ brief focuses entirely on the Eighth Amendment, framing the issue solely as whether the penalty constitutes an excessive fine. In addition, at oral argument, counsel for Plaintiffs focused his challenge on the Eighth Amendment argument only.

need not be decided because even assuming the civil monetary penalty in this case constitutes a “fine” for purposes of the Eighth Amendment, it is not excessive. A fine is unconstitutionally excessive if it is “grossly disproportional to the gravity of the defendant’s offense.” *Id.* at 334.

Ratsamy relies solely on Bajakajian to argue that the civil monetary penalty is unconstitutional. In Bajakajian, the defendant pleaded guilty to failing to report that he was transporting more than \$10,000 in currency out of the country. *Id.* at 324-25. The Supreme Court held that the forfeiture of the entire amount of the currency - \$357,144 - was grossly disproportionate to the gravity of the offense. *Id.* at 337-338.

In making this determination, however, the Supreme Court cautioned “that judgments about the appropriate punishment for an offense belong in the first instance to the legislature” and that judicial determination regarding the gravity of an offense “will be inherently imprecise.” *Id.* at 336. The goal of the SNAP program is to safeguard the health and well being of the nation’s population by raising levels of nutrition among low income households. 7 U.S.C. § 2011. Congress originally prescribed harsh penalties for violations, including permanent disqualification from the program. Since the program’s inception, Congress has amended the penalty provisions to make them more severe in order to deter fraud and prevent trafficking activity hoping to maintain the integrity of the program. S. Rep. No. 97-504 at 63 (adopting several provisions “designed to increase penalties for retail stores which violate the Food Stamp Act” and stating that their purpose is “deterrence for those stores which might be inclined to violate the law.”). Indeed, in 2008, Congress specifically amended the civil monetary penalty and increased the maximum possible penalty from \$10,000 per violation to \$100,000 per violation. This evinces Congress’ belief that violations are considered serious offenses. Thus,

the maximum statutory penalty is a proper consideration of whether an assessment is excessive.

In this case, the penalty assessed is below the \$66,000 maximum statutory penalty that could have been assessed had Ratsamy's food stamps redemptions been higher and far below the \$600,000 maximum statutory penalty that is currently in effect.<sup>6</sup>

Ratsamy urges the Court to compare the amount of the penalty to the value of the ineligible goods sold during the six violations, which total approximately \$66.00. But this is a false comparison; the formula for calculating the civil monetary penalty is related to a store's SNAP redemptions, not the value of the ineligible goods sold or the number of violations. The size of the penalty here is driven by the high volume of SNAP business done by 88 Oriental Foods (88 Oriental Foods' cumulative redemptions for the 12-month period preceding the issuance of the Charge Letter exceeded a half-million dollars).

In addition, the civil monetary penalty is designed to bring participating stores into compliance and to deter stores from violating the law. As one court aptly noted,

Nowhere in the Senate Report is it suggested that the penalty be made to reflect the amount involved in the violation. As the amount involved in the sale of ineligible goods is often small, a civil money penalty which is made proportionate to that amount is unlikely to have the kind of deterrent effect that the Senate intended.

Objio v. United States, 113 F. Supp. 2d 204, 210. This case is illustrative of the Objio court's reasoning. The value of the ineligible goods involved here is only \$66.00. The penalty must be sufficiently severe so that the retailer ceases the illegal activity rather than making the economic decision to simply pay the penalty yet continue violating the regulations. Indeed, calculating the

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<sup>6</sup> While the current maximum fine is \$100,000 per violation, the USDA regulations have not incorporated Congress' increase, so the maximum fine in this case is \$11,000 per violation.

penalty in accordance with the formula set forth in 7 C.F.R. § 278.6(g) and not considering the value of the ineligible goods sold in that calculation is consistent with the intent of Congress. Courts have routinely upheld civil monetary penalties calculated in accordance with the regulations. See Vasudeva v. United States, 214 F.3d 1155, 1161-62 (9th Cir. 2000) (upholding penalties of \$13,200 and \$39,840 for trafficking in food stamps); Traficanti v. United States, 227 F.3d 170, 177 (upholding \$40,000 transfer penalty); Objio, 113 F.Supp. 209-11 (upholding a transfer penalty of \$15,000 where the value of the goods was \$280).

Next, in Bajakajian, the Supreme Court noted that the defendant did not fit into the class of persons for whom the forfeiture statute was principally designed - money launderers, drug traffickers, and tax evaders. Bajakajian, 524 U.S. at 337-38. The civil monetary penalty at issue in this case targets those who violate SNAP's regulations. Ratsamy's store violated SNAP on at least six occasions by selling ineligible items and therefore falls squarely among the class of persons targeted by the statute.

Moreover, in Bajakajian, the Supreme Court recognized that the crime at issue was "solely a reporting offense" and stated that transporting the currency out of the country was lawful as long as it was reported and unrelated to any other illegal activity. Id. at 337. It therefore considered the harm to be minimal, affecting the Government "in a relatively minor way," with "no fraud on the United States" and "no loss to the public fisc." Id. at 339. By contrast, Ratsamy's actions harmed the government, in the form of monetary damages (albeit small) and harm to the integrity of the food stamp program. As stated previously, 88 Oriental Foods sold ineligible items on at least six occasions during a six-month period. Acceptance of ineligible items for food stamps is a serious violation that defrauds the government. Fraudulent

claims make the administration of the food stamp program more difficult, and widespread fraud undermines public confidence in the government. See S. Rep. No. 99-345, at 2-3 (noting ubiquitous fraud in government programs and the inherent difficulties in deterring fraud).

Finally and significantly, Ratsamy could have elected temporary disqualification from the SNAP instead of the civil monetary penalty. Presumably, the financial consequences of a temporary disqualification were greater to Ratsamy than the civil monetary penalty. Having chosen the monetary penalty in lieu of a temporary disqualification, Ratsamy cannot now be heard to complain that his choice is unconstitutional. See Vasudeva, 214 F. 3d at 1161-62.

Considering the relevant factors above renders inevitable the conclusion that, while severe, the penalty imposed here is not constitutionally excessive. Accordingly, there is no Eighth Amendment violation and Plaintiffs' motion for summary judgment is denied and the Defendants' motion is granted.

#### IV. CONCLUSION

Based upon the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that Plaintiffs' Motion [Docket No. 17] is **DENIED** and Defendants' Motion [Docket No. 9] is **GRANTED**.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

BY THE COURT:

s/Ann D. Montgomery  
ANN D. MONTGOMERY  
U.S. DISTRICT JUDGE

Dated: April 21, 2011.



**EDWARD M. KRATT**

Attorney At Law

350 Broadway, Suite 1202  
New York, NY 10013

Tel: (212) 941-1277  
Fax: (212) 274-1189

E-mail: edkratt@aol.com

Via Federal Express

January 13, 2012

Ms. Lorie Conneen  
Administrative Review Officer  
USDA, Food and Nutrition Service  
Administrative Review Branch  
USDA, FNS  
3101 Park Center Drive  
Room 432  
Alexandria, Virginia 22302

Re: Mukhtar Saleh and Flatbush Best Deli, Inc.

Dear Ms. Conneen:

I am the attorney for Mukhtar Saleh and Flatbush Best Deli, Inc. in connection with its request for your review of the determination, dated December 15, 2011, by Ms. Gilda Torres of the USDA New York Field office, which disqualified said business from participation in the Supplemental Nutrition Assistance Program (SNAP) program for a period of six months.

Pursuant to your letter of December 27, 2011 (enclosed for your reference), I am timely submitting additional information in support of our position that such determination should be reversed and that my clients be permitted to continue their participation in the SNAP program.

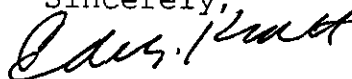
Specifically, I have enclosed the following: 1) the Affidavit of Mukhtar Saleh, the owner of Flatbush Best Deli, Inc.; 2) the Affidavit of his wife, Ms. Gawhara Saleh; 3) and a Petition from the clients of the store in support of its application to continue their eligibility for the SNAP program.

As detailed more fully in our prior submitted Request for Administrative Review, dated December 20, 2011 (an additional copy is enclosed herein), it is strongly contended that, under all the circumstances herein, such a penalty is extreme and unwarranted and would cause excessive hardship to the Haitian community that the business serves.

In light of all of the above factors, I urge this Administrative Review Staff to reverse the prior determination of the USDA New York Field office. I urge the Review Staff to issue a warning letter, or, in the alternative to impose a civil monetary penalty, in lieu of disqualification.

Thank you for your consideration in this matter.

Sincerely,



Edward M. Kratt  
Attorney for Mukhtar Saleh  
and Flatbush Best Deli, Inc.

encl.

cc: Mr. Mukhtar Saleh



U.S. DEPARTMENT OF AGRICULTURE  
FOOD AND NUTRITIONAL SERVICE  
OFFICE OF ADMINISTRATIVE REVIEW

-----x  
IN RE: FLATBUSH BEST DELI, INC  
MUKHTAR SALEH

**AFFIDAVIT OF  
MUKHTAR SALEH**

-----x  
STATE OF NEW YORK)

) ss:  
COUNTY OF KINGS )

MUKHTAR SALEH, hereby states under the penalties of perjury that  
the following is true:

1. I am the Owner of Flatbush Best Deli, Inc., located at 1218 Flatbush Avenue, Brooklyn, New York 11226-7667.
2. I started and incorporated my business in 2009 and chose its particular location to primarily serve the Haitian community, which is a large presence in this Flatbush area. Many in this community speak no or little English.
3. My wife, Gawhara Saleh, who is of Moroccan descent and speaks fluent French and Creole languages, knew many people from the Haitian community and understood that they were under-served in the retail grocery area, due to language barriers and a lack of particular Haitian food items.
4. Realizing the need for those services to the Haitian community and hoping that I could maintain a successful business

for my family and serve the Haitian community as well, I opened my business.

5. We have served our Haitian clients well, as my wife and various employees, who speak French and Creole fluently, work in the store, covering all shifts and enabling our clients to effectively communicate with them in their native languages. We also carry native Haitian food items, which no other stores in the area carry. We assist our clients in the purchase of these indigenous foods and their maintenance of an ethnic-based diet.

6. After the recent earthquake and disaster in Haiti, we served recent refugees who came to Brooklyn from Haiti by providing free and low cost food items to them.

7. The Haitian community, which is an extremely low income group, receives SNAP benefits and depend on those to purchase eligible food items.


8. My business also depends upon the income derived from SNAP purchases by my clients. Without those benefits, my business would be unable to maintain itself.

9. Disqualification from the SNAP program for six months, or even a shorter period of time, would be an extreme and undue hardship to the Haitian community as well as to my business and my family.

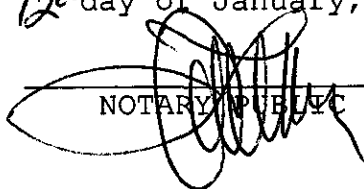
10. I respectfully request that such a disqualification not occur and that I be able to continue my participation in the SNAP program.

11. Thank you for your courtesy and understanding.

Dated: New York, N.Y.  
January 13, 2012

  
MUKHTAR SALEH

Sworn to before me this  
12<sup>th</sup> day of January, 2012

  
NOTARY PUBLIC

**GREGORY YADGAROFF**  
**NOTARY PUBLIC-STATE OF NEW YORK**  
No. 01YA6194434  
Qualified in Queens County  
My Commission Expires September 29, 2012

U.S. DEPARTMENT OF AGRICULTURE  
FOOD AND NUTRITIONAL SERVICE  
OFFICE OF ADMINISTRATIVE REVIEW

-----x  
IN RE: FLATBUSH BEST DELI, INC  
MUKHTAR SALEH

**AFFIDAVIT OF  
GAWHARA SALEH**

-----x  
STATE OF NEW YORK)

) ss:  
COUNTY OF KINGS )

GAWHARA SALEH, hereby states under the penalties of perjury that  
the following is true:

1. I am the wife of Mukhtar Saleh, the Owner of Flatbush Best Deli, Inc., located at 1218 Flatbush Avenue, Brooklyn, New York 11226-7667.
2. I work with my husband in our business, which opened in 2009. We chose its particular location to primarily serve the Haitian community, which is a large presence in this Flatbush area. Many in this community speak no or little English.
3. I am of Moroccan descent and speak fluent French and Creole languages. I knew many people from the Haitian community and understood that they were under-served in the retail grocery area, due to language barriers and a lack of particular Haitian food items.
4. Realizing the need for those services to the Haitian

community, I urged my husband to start a retail food business in this area. I was hopeful that we could maintain a successful business for our family and serve the Haitian community as well.

5. We have served our Haitian clients well. I and various employees, such as Patrick Perry, a native born Haitian, speak French and Creole fluently. We work in the store, covering all shifts and enabling our clients to effectively communicate with us in their native languages. We also carry native Haitian food items, which no other stores in the area carry. We assist our clients in the purchase of these indigenous foods and their maintenance of an ethnic-based diet.

6. After the recent earthquake and disaster in Haiti, we served recent refugees who came to Brooklyn from Haiti by providing free and low cost food items to them. My husband was particularly generous and caring to these poor refugees, who had little or no money to afford food.

7. The Haitian community, which is an extremely low income group, receives SNAP benefits and depends on those to purchase eligible food items.

8. Our business also depends upon the income derived from SNAP purchases by our clients. Without those benefits, our business would be unable to maintain itself.

9. Disqualification from the SNAP program for six months, or

even a shorter period of time, would be an extreme and undue hardship to the Haitian community as well as to our business and my family.

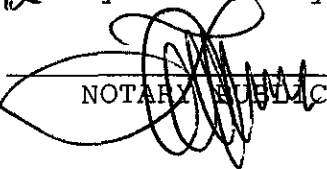
10. I respectfully request that such a disqualification not occur and that we be able to continue our participation in the SNAP program.

11. Thank you for your courtesy and understanding.

Dated: New York, N.Y.  
January 13, 2012

  
GAWHARA SALEH

Sworn to before me this  
12<sup>th</sup> day of January, 2012

  
NOTARY PUBLIC

**GREGORY YADGAROFF**  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01YA6194434  
Qualified in Queens County  
My Commission Expires September 29, 2012

## PETITION

We the undersigned, members of the Haitian community support Flatbush Best Deli Inc. in their efforts to maintain its participation in the Supplemental Nutrition Assistance Program (SNAP).

We depend upon the specialized services that Flatbush Deli provides and we need the SNAP program to assist us in our purchases. No other deli provides similar services to our community! No other store speaks our language and carries our native foods.

Noumenm ki siyen pa anba, se manm kominote Ayisyen an ki sipòte Flatbush Best Deli Inc. nan efò ke y ap fè pou yo kontinye patisipe nan Pwogram Asistans Nitrisyon Siplemantè (SNAP).

Nou depann de sèvis spesyalize ke Flatbush Deli Inc. bay & nou bezwen pwogram SNAP la pou ede nou achte. Pa gen oken lòt boutik ki bay sèvis sa yo nan kominote a! Pa gen oken lòt boutik tankou pa nou a ki pale lang ou oubyen gen manje natif natal.

Name	Address	Signature
GUINSLY ETIENNE	2414 NEWKIRK AVE APT. 2A BK. NY	[Signature]
William Sanabria	490 E. 23 Street Apt C1 BK. N.Y. 11226	[Signature]
Assadah Oliver	2210 NEWKIRK 2nd Fl BK NY 11226	[Signature]
DORCUS VAILES	2313 NEWKIRK BRKN 11224 PH3	[Signature]
Sedrick Jean Baptiste	656 East 26th Street Brooklyn 11220	[Signature]
Christine Soares	619 East 21th Street Brooklyn 11210	[Signature]
JEAN CHARLES	376 East 7th Street Brooklyn NY 11218	[Signature]
DELROY MAYNE	543 E. 21 Street Brooklyn NY	[Signature]
BOBBY WARE	413 E 23 Street Brooklyn NY 11226	[Signature]
TRACY WILLIAMS	585 E 21 Street Brooklyn NY 11226	[Signature]
Cassie Young	2323 NEWKIRK AVE Brooklyn NY 11226	[Signature]
Amanda Johnson	2212 DITMAS AVE Brooklyn 11226	[Signature]
Kira Johnson	2225 DITMAS Ave BK NY 11226	[Signature]
HOLDEN VILLEN	1220 FLATDUSH AVE BK NY 11226	[Signature]
Georg Johnson	2215 NEWKIRK AVE	[Signature]
Marie Joseph	2225 ditmas Ave	[Signature]
Marilyn Williams	1199 Flatbush Avenue	[Signature]
TATRICK LEON	2212 Ditmas Avenue	[Signature]
Dennis Glover	1228 Flatbush Ave	[Signature]
ROBINSON HOLMAS	1264 FLATDUSH AVE	[Signature]
Shane Jones	585 East 21 Street	[Signature]
Shirley Jeanly	5006 Ave D 11226	[Signature]
JAMES WILLIAMS	975 Ocean Ave 11226	[Signature]
Nedra Williams	975 Ocean Ave 11226	[Signature]
Lorine Sanders	1418 St-Mark Ave 11233	[Signature]
Maryline Mioron	618 E 21 St Apt E 6	[Signature]
Cheryl Williams	401-E-23-ST Apt-4-L	[Signature]
Emmanuel Sanelle	2574 Bedford Ave 11220	[Signature]

## PETITION

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Name	Address	Signature
James Casanova	401 East 23rd St. Apt 5L	[Signature]
Brooklyn N.Y. 11226		
Patricia Casanova	401 East 23rd Apt 8L	[Signature]
Wendy Petit	401 East 23rd Apt 7L	[Signature]
Stephanie Stephen	401 East 23rd Apt 7L	[Signature]
Kevin Brown	401 East 23rd Apt 12L	[Signature]
Yvonne Dore	401 East 23rd St. 2nd, 11226	[Signature]
Karen Vane	401 East 23rd St. " 11	[Signature]
Heather Henrichs	401 East 23rd St. 11226	[Signature]
John Thomas	401 East 23rd St. #6R	[Signature]
Alia Joseph	401 East 23rd St.	[Signature]
Dianne Modeste	401 E. 23 Street apt. 10R	[Signature]
Syrat Croy	417 E 23rd St. Bklyn NY 11226	[Signature]
Kamil Croy	" " " "	[Signature]
Russell Croy	" " " "	[Signature]
Greg King	1111 Flatbush	[Signature]
1831 E 118th St Brooklyn NY		
Jon Legal	549 E. 22nd St. 400	[Signature]
Steve Crooks	1272 Flatbush Ave	[Signature]
Cecile LeBon	2110 New York St.	[Signature]
Sharon	Willard St. 11226	[Signature]
Avanika	Willard - 401-E-23	[Signature]
Terrian	Robson - 401-E-23	[Signature]
Maxim Franca	1275 Flatbush Ave	[Signature]
Artene Sinclair	2304 New York St.	[Signature]



## PETITION

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Name	Address	Signature
Kenneth Stewart	2225 Ditmas Ave	Kenneth Stewart
SANTANA ALLEN	636 E 21st	Mariann
<del>CECILIA</del> COLLES	1216 Ditmas Ave	C. R. COLLES
Rhonda-Elise St-Jacques	401 E 23rd St	Rhonda-Elise St-Jacques
Luis Saint-Jacques	401 E 23rd St	Luis Saint-Jacques
KAREN CAMAROTTE	401 E 23rd Street	K. Camarotte
Val Harewood	604 East 23rd Street	V. Harewood
James Berthann	259 East 26 Street	J. Berthann
Lois Francis	2413 Clarendon Road	L. Francis
Jennifer Murdaugh	529 E 22nd St #18	Jennifer Murdaugh
Rox Murdaugh	529 East 22nd St #13	Rox Murdaugh
Shirley Col	529 East 22nd St apt 1A	Shirley Col
Shirley Col	529 East 22nd St apt 1A	Shirley Col
Nellay St-Fleur	529 E 22nd St apt 20	Nellay St-Fleur
Debra St-Fleur	529 E 22nd St apt 20	Debra St-Fleur
DANETTA FARREN	529 EAST 22nd Street	Danetta Farren
Janet Glasgow	529 East 22nd Street #26	Janet Glasgow
Carmin Kate	529 East 22nd Street APT 3A	Carmin Kate
Sandy Desjardins	2116 Ditmas Ave apt 35	Sandy Desjardins
Charles	1114-06-167	Charles
E. Collins	2116 DITMAS AVE	E. Collins
M. Campbell	2116 Ditmas Ave	M. Campbell
Amad Mady	5806 Farragut RD HX	Amad Mady
ARMANDO TORRIENTE	2225 DITMAS AVE APT #2A	Armando Torriente
Verneal Johnson	401 23rd Ditmas St	Verneal Johnson
Servant Beland	220 GALT Ave	Servant Beland
Devon Harris	222 E 17th	Devon Harris

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Name	Address	Signature
FRANK MAXIME	490 BROADWAY FLATBUSH 4B	11226
ALEX MATCHOU	1216 Flat Bush 3C	11226
CLIFF SIMMONS	255 E 25th	11226
Kimberly Williams	255 E 25th	11226
MARIE-JOIE DORVILLE	452 East 21st	11226
Wanda Smith	1715 Northwood Ave	11226
Melch, WALTER	534 E 21st Brooklyn N.Y.	11226
Alfred Jones	1246 Flatbush Ave Apt 2	11226
Esther Watts	580 East 22nd St	11226
Jean Paul	1206 Flat Bush	11226
Anthony Jones	955 Ocean Ave 4E	11226
Michael Jones	Brooklyn NY	11226
Michael Jones	600 E 21st St	11226
WALTER DORVILLE	2225 Ditmars Ave 3B	
Walter Joseph	580 East 21st St. 2K	
Therese DORVILLE	2304 East 23rd St. Apt 3L	
Kevin Primus	2301-03 Newkirk Apt 5	11226
Brandon Ellison	2116 Ditmas Ave Apt 3	11226
Brenda Morris	2315 Newkirk Ave Apt E-11	11226 Brenda Morris
William Morris	2315 Newkirk Ave Apt E-11	11226
Rodney Howard	467 Stephen St APT 2C	11226 Rodney Howard
Cheryl Cline	480 East 23rd APT 2D	11226 Cheryl Cline
Joyce SHAW	1012 Ocean Ave #61	11226 Joyce Shaw
Cheryl Levy	2313 Newkirk Ave (PH)	11226 Cheryl Levy
DORVILLE WATTS	531 East 22	11226
Tainisha Patterson	1191 Flatbush Ave Brooklyn NY	11226
MICHAEL LEWIS	550 E 21st 3K NY	11226
JULIAN LONDON	2116 DITMAS AVE 3C Brooklyn NY	11226

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11226 TTT

Name	Address	City	State	Zip	Signature
Jame Cody STABLER	451 East 22 St	Brooklyn	NY	11226	[Signature]
Frankie Georges	524 E 22nd	Brooklyn	NY	11226	[Signature]
BUN PENG	HAPPY 1 HOUR PHOTO	1226 FLATBUSH	Brooklyn	11226	[Signature]
Clothing Store	6918 Flatbush	Brooklyn	NY	11226	[Signature]
Millie White	2814 Newkirk Ave	Brooklyn	NY	11226	[Signature]
ARMANDO TORRIENTE	2225 Ditmas Ave Apt 2A	Brooklyn	NY	11226	[Signature]
KAMAHUSAN	1216 Flatbush	Brooklyn	NY	11226	[Signature]
BILL A RROYO	975 Ocean Ave	Brooklyn	NY	11226	[Signature]
ARIAS TAVAREZ	975 Ocean Ave	Brooklyn	NY	11226	[Signature]
Dave CRUZ	975 Ocean Ave	Brooklyn	NY	11226	[Signature]
Mike Hunter	975 Ocean Ave	Brooklyn	NY	11226	[Signature]
Jimmy Rosado	975 Ocean Ave	Brooklyn	NY	11226	[Signature]
James WILLS	967 Ocean Ave	Brooklyn	NY	11226	[Signature]
Linda Sanders	967 Ocean Ave	Brooklyn	NY	11226	[Signature]
LUCILLE DAVIS	585 E 21 St Apt 10	Brooklyn	NY	11226	[Signature]
ALICE	3350 7th Ave	Brooklyn	NY	11226	[Signature]
Edia	611 E 21 St Apt 6B	Brooklyn	NY	11226	[Signature]
Sandra Orellana	611 E 21 St Apt 1B	Brooklyn	NY	11226	[Signature]
Patricia Russell	611 E 21 St Apt 4B	Brooklyn	NY	11226	[Signature]
Latoya Knight	611 E 21 St Apt 2F	Brooklyn	NY	11226	[Signature]
Bruce Richmond	611 E 21 St Apt 3E	Brooklyn	NY	11226	[Signature]
Antoine Michaud JR	611 E 21 St Apt 1A	Brooklyn	NY	11226	[Signature]
TRINIDAD Jones	611 E 21 St Apt 6C	Brooklyn	NY	11226	[Signature]
CARLOS RAFAEL	611 E 21 St Apt 2G	Brooklyn	NY	11226	[Signature]
Alejandro Hurtado	611 E 21 St Apt 6E	Brooklyn	NY	11226	[Signature]
Franklin A Perez	611 E 21 St	Brooklyn	NY	11226	[Signature]
Needee Jones	611 E 21 St	Brooklyn	NY	11226	[Signature]
Mike Lee	2814 Newkirk Ave	Brooklyn	NY	11226	[Signature]



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Name	Address	Signature
Vivian J. J. J.	580 E. 21st street apt 10 11226	Vivian J. J. J.
L. Edwards	2214 NEWKIRK AVE 11226	L. Edwards
Marie Daniel	1015 ave 7 37B 11226	Marie Daniel
Randy Gordon	49 Clarkson Ave Bklyn 11226	Randy Gordon
Willie Simpson	585 East BR 07/50 11226	Willie Simpson
Paul D. G. G.	371 East 23rd 11226	Paul D. G. G.
A. Jay Rahin	484 East 21st Brooklyn NY 11226	A. Jay Rahin
COOCE BLAIR	636 E 21 Brooklyn NY 11226	COOCE BLAIR
Joanna Joseph	1273 Herkimer St Brooklyn NY 11226	Joanna Joseph
Angelina	580 E 21 St apt 5B 11226	Angelina
Kennetho Lago	531 E 22nd St Brooklyn NY 11226	Kennetho Lago
J. J. J.	531 St 22 11226	J. J. J.
J. J. J.	1700 Nathan Ave 11226	J. J. J.
J. J. J.	2584 E 19th 11226	J. J. J.
Eric Johnson	1351 Flatbush Ave 2F 11226	Eric Johnson
Cynthia White	531 E 21st Brooklyn NY 11226 3F	Cynthia White
Emilete Sany	2726 Foster Ave Bklyn NY	Emilete Sany
Sandy K. K.	49 CLARKSON Ave 11226	Sandy K. K.
Robert H. H.	1228 Flatbush Ave 11226	Robert H. H.
Patrick Fralin	2215 NEWKIRK Ave 11226 4B	Patrick Fralin
Antonia Berry	490 East 23rd St 4C 11226	Antonia Berry
Paul McKENZIE	367 EAST 23rd St 11226	Paul McKENZIE
Michael Pearson	505 E 22nd St AP-19 11226	Michael Pearson
Joanne Miller	1165 Flatbush Ave Apt 27 11226	Joanne Miller
Margie K. Lorraine	454 East 22nd and Ave D 3C	Margie K. Lorraine
Brandon Caron	2011 Flatbush Ave 3C 11226	Brandon Caron
Eusebio Edwards	1247 Flatbush Ave 3F 11226	Eusebio Edwards
Benjamin	1247 Flatbush Ave 3F 11226	Benjamin

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Name	Address	Signature
Jose Lajava	600 E 21st Brooklyn NY 11226 3C	[Signature]
Victor Cedeño	600 E 21st Brooklyn NY 11226 3C	[Signature]
Quintara Samanthra	2225 DITMAS AVE BROOKLYN NY 11226 1C	[Signature]
Anthony Reyes	1270 Ocean Ave Brooklyn NY 11236	[Signature]
Jimmy Jenkins	1270 Ocean Ave Brooklyn NY 11236	[Signature]
Robert Smith	1345 Flatbush Ave Brooklyn NY 11226	[Signature]
Valerie Wilson	529 E 22nd E 11226	[Signature]
Supreme [unclear] Archer	2211 Ditmas Ave 11226	[Signature]
Sandra Foster	2211 Ditmas Ave	[Signature]
JAMELA Ali	97 St Queens NY 11409	[Signature]
Angel Arroyo	635 East 21 St 11226	[Signature]
Felix [unclear]	3601 Ave D 11226	[Signature]
Mario Sanchez	586 E 22 St	[Signature]
MADE ANGUS	540 E 22 St 11226-3B	[Signature]
CHRISTE MARIOT	2116 DITMAS AVE EAST 21 ST 11226	[Signature]
Patrick Dossin	2116 DITMAS AVE EAST 21 ST 11226	[Signature]
KRANTZ AZARD	662 E 21 St APT C5 11226	[Signature]
Nikun John	201 New York Ave 11226 62	[Signature]
Chane Wall	2011 New York Ave 11226 151	[Signature]
TYERIK Jones	529 E 22nd Street 5C 11226	[Signature]
P. Francis	1233 Flatbush Ave 5F	[Signature]
F. Chamberlain	1233 Flatbush Ave 5B	[Signature]
James Williams	975 Ocean Ave Brooklyn NY 11226	[Signature]
Gaelle [unclear]	165 East 19th St Brooklyn 11226	[Signature]
Naseema Sahib	505 E 22nd St Brooklyn NY 11226	[Signature]
Michael Pearson	505 E 22nd St Brooklyn NY 11226	[Signature]

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Name	Address	Signature
Shanqua Andrews	445 E 20th St 11226	Shanqua Andrews
Yves L. Beauville	2212 DITMAS AVE 11226	Yves L. Beauville
SEWARD KNIGHT	1191 FLATBUSH AVE	SEWARD KNIGHT
ANTHONY PATTERSON	1191 FLATBUSH AVE	ANTHONY PATTERSON
Justine Maxwell	2313 NEWKirk Ave	J. Maxwell

United States  
Department of  
Agriculture



Food and  
Nutrition  
Service

December 27, 2011

Benefit  
Redemption  
Division

Law Office of Edward M. Kratt  
Edward M. Kratt, Attorney  
350 Broadway  
Suite 1202  
New York, New York 10013

Administrative  
Review Branch

3101 Park Center  
Drive, Room 432  
Alexandria, VA  
22302

Re: Mukhtar Saleh, Owner  
Flatbush Best Deli Inc  
1218 Flatbush Avenue  
Brooklyn, New York 11226-7667

(703) 305-2817

General:  
(703) 305-2464

Dear Counselor:

Fax:  
(703) 305-2821

This is to confirm receipt of your request for an administrative review of the adverse action under the Supplemental Nutrition Assistance Program (SNAP) imposed against Flatbush Best Deli Inc, Brooklyn, New York by the Food and Nutrition Service (FNS). Your request for review has been recorded under case number C0145430.

lorie.conneen  
@fns.usda.gov

If there is any additional information you may wish to provide in support of your position in this matter, or if your request for administrative review did not include any information showing the grounds on which the review is being sought, you must forward such information to my attention at the address provided in the left margin of this letter within three weeks of the date you receive this correspondence. Please be advised that if there is no information in support of your position, a review cannot be conducted, and, as provided in 7 CFR §279.4(b), the adverse action of the FNS office shall be final.

You are permitted to remain authorized in the SNAP through the duration of the administrative review process only if the adverse action in this case does not involve either a permanent disqualification or denial of authorization.

I will render a Final Agency Decision as soon as possible. Due to the large volume of review requests received by the Food and Nutrition Service's Administrative Review Branch, limiting your case status inquiries to the extent possible will permit more timely service to you and other Appellants that are also awaiting decisions regarding their appeals.

Sincerely,

A handwritten signature in black ink, appearing to read "Lorie Conneen", is written over the word "Sincerely,".

Lorie Conneen  
Administrative Review Officer  
USDA, Food and Nutrition Service  
Administrative Review Branch

cc: Mukhtar Saleh, Flatbush Best Deli Inc